

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMIAH DONOVAN,

Petitioner,

v.

PATRICK COVELLO,

Respondent.

No. 1:20-cv-00694-ADA-EPG (HC)

ORDER DENYING PETITIONER'S
APPLICATION FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL AND
REQUEST FOR RECONSIDERATION

ORDER GRANTING PETITIONER'S
REQUEST FOR COPY OF OBJECTIONS TO
FINDINGS AND RECOMMENDATIONS

ORDER DIRECTING CLERK OF COURT TO
MAIL PETITIONER COPY OF
OBJECTIONS TO FINDINGS AND
RECOMMENDATIONS

ORDER DIRECTING CLERK OF COURT TO
FILE NOTICE OF APPEAL AND PROCESS
APPEAL TO NINTH CIRCUIT

(ECF No. 36)

Petitioner Jeremiah Donovan is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 25, 2022, the assigned United States Magistrate Judge issued findings and recommendations that recommended granting Respondent's motion to dismiss and dismissing the second amended petition as untimely. (ECF No. 29.) On October 5, 2022, Petitioner filed objections. (ECF No. 33.) The Court adopted those findings and recommendations, in full, on January 10, 2023. (ECF No. 34.) That same day, judgment was

1 entered. (ECF No. 35.) In its order adopting the findings and recommendations, the Court
2 declined to issue a certificate of appealability (“COA”) because “reasonable jurists would not find
3 the Court’s determination that the petition should be dismissed debatable of wrong, or that
4 Petitioner should be allowed to proceed further.” (*Id.* at 5.)

5 On January 26, 2023, the Court received the instant application for an extension of time to
6 file notice of appeal and request for reconsideration for certificate of appealability and production
7 of document. (ECF No. 36.) Petitioner contends that he needs the extension of time and a copy
8 of his objections to the findings and recommendations to adequately and effectively prepare his
9 request for reconsideration for a certificate of appealability. (*Id.* at 2.) Petitioner attaches his
10 notice of appeal to the application. (ECF No. 36 at 1, 6.)

11 Rule 4 of the Federal Rules of Appellate Procedure provides that in a civil case, the notice
12 of appeal (“NOA”) “must be filed with the district clerk within 30 days after entry of the
13 judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). “Rule 4(a)(5) provides a thirty-
14 day grace period within which parties may request more time to file a NOA upon a showing
15 of good cause or excusable neglect.” *Washington v. Ryan*, 833 F.3d 1087, 1090 (9th Cir. 2016).
16 “‘Good cause’ is a non-rigorous standard that has been construed broadly across procedural and
17 statutory contexts.” *United States v. Navarro*, 800 F.3d 1104, 1109 (9th Cir. 2015) (quotation
18 marks omitted) (quoting *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010))
19 (discussing “good cause” in context of Fed. R. App. P. 4(b)(4)).

20 Here, the fact that Petitioner wishes additional time to prepare and file a motion for this
21 Court to reconsider its COA determination does not constitute good cause to extend the time to
22 file a NOA given that: (1) Petitioner has already prepared his notice of appeal and lodged it with
23 the Court, (ECF No. 36 at 5–100); (2) the Ninth Circuit rules provide that “[i]f the district court
24 denies a COA as to all issues, appellant may file a request for a COA in the court of appeals
25 within 35 days of the filing of a notice of appeal or amended notice of appeal, or the district
26 court’s denial of a COA in full, whichever is later,” and “[i]f, after the district court has denied a
27 COA in full, the court of appeals also denies a COA in full, appellant, pursuant to Circuit Rule
28 27-10, may file a motion for reconsideration,” 9th Cir. R. 22-1(d); and (3) this Court previously


considered Petitioner's objections to the findings and recommendation, which Petitioner indicates is necessary to prepare his motion for reconsideration, when it declined to issue a COA. (ECF No. 34).

Accordingly,

1. Petitioner's application for an extension of time to file a notice of appeal and request for reconsideration, (ECF No. 36), is denied;
2. Petitioner's request for a copy of the objections to the findings and recommendations is granted; and
3. The Clerk of Court is directed to:
 - a. Mail a copy of the objections to the findings and recommendations (ECF No. 33) to Petitioner; and
 - b. File the notice of appeal (ECF No. 36 at 5–100) with the original file date of January 26, 2023 and process the appeal to the United States Court of Appeals for the Ninth Circuit.

IT IS SO ORDERED.

Dated: March 7, 2023


UNITED STATES DISTRICT JUDGE